

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1950

No. 7

**NATIONAL COUNCIL OF AMERICAN-SOVIET
FRIENDSHIP, INC., DENVER COUNCIL OF
AMERICAN-SOVIET FRIENDSHIP, ET AL., PETI-
TIONERS,**

vs.

**J. HOWARD McGRATH, ATTORNEY GENERAL OF
THE UNITED STATES, SETH W. RICHARDSON,
CHAIRMAN OF THE LOYALTY REVIEW BOARD
OF THE UNITED STATES CIVIL SERVICE COM-
MISSION, ET AL.**

**ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT**

PETITION FOR CERTIORARI FILED JANUARY 23, 1950.

CERTIORARI GRANTED MAY 15, 1950.

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United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 10165

NATIONAL COUNCIL OF AMERICAN-SOVIET FRIENDSHIP, INC.
et al., *Appellants,*

vs.

TOM C. CLARK, individually and as U. S. Attorney
General, et al., *Appellees.*

Appeal from the United States District Court for the
District of Columbia

JOINT APPENDIX TO BRIEFS

1 Filed Jun 29 1948 Harry M. Hull, Clerk

Civil Action No. 2663-48

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF COLUMBIA**

NATIONAL COUNCIL OF AMERICAN-SOVIET FRIENDSHIP, INC.

114 East 32nd Street

New York 16, New York

DENVER COUNCIL OF AMERICAN-SOVIET FRIENDSHIP

667 South Downing Street

Denver 9, Colorado

WILLIAM HOWARD MELISH

126 Pierrepont Street

Brooklyn, New York

RICHARD MORFORD

114 East 32nd Street

New York 16, New York

HENRY PRATT FAIRCHILD

230 East 48th Street

New York, New York

JOHN A. KINGSBURY

Lavorika, Shady, New York

M. WALTER PESMAN

372 South Humboldt Street

Denver, Colorado

CORLISS LAMONT

450 Riverside Drive

New York 27, New York

Plaintiffs,

vs.

TOM C. CLARK, individually and as Attorney General of the United States, **SETH W. RICHARDSON**, individually and as Chairman of the Loyalty Review Board of the United States Civil Service Commission, **GEORGE W. ALGER**, **JOHN HARLAN AMEN**, **HARRY A. BIGELOW**, **AARON J. BRUMBAUGH**, **JOHN KIRKLAND CLARK**, **CLEM W. COLLINS**, **HARRY W. COLMERY**, **BURTON L. FRENCH**, **META**

GLASS, EARL G. HARRISON, GARRETT HOAG, WILBUR LA ROE, JR., LAWRENCE T. LEE, ARTHUR W. MAC MAHON, CHARLES E. MERRIAM, HENRY PARKMAN, JR., MURRAY SEASONGOOD, HARRY L. SHATTUCK, MRS. HARPER SIBLEY and JAMES F. TWOHY, individually and as members of the Loyalty Review Board of the United States Civil Service Commission,

Defendants.

Complaint for Injunction and Declaratory Judgment

The plaintiffs, NATIONAL COUNCIL OF AMERICAN-SOVIET FRIENDSHIP, INC., DENVER COUNCIL OF AMERICAN - SOVIET FRIENDSHIP, WILLIAM HOWARD MELISH, RICHARD MORFORD, HENRY PRATT FAIRCHILD, JOHN A. KINGSBURY, M. WALTER PESMAN and CORLISS LAMONT complaining of the defendants, allege:

2

I. *Jurisdiction*

1. The jurisdiction of the Court in this action arises under sections 11-301, 11-305 and 11-306 of the District of Columbia Code, section 10 of the Administrative Procedure Act, 60 Stat. 243, 5 U. S. Code, Sec. 1009, and the Act of June 14, 1934, as amended, 28 U. S. C. Sec. 400.

II. *Purpose of Action*

2. This action is brought to enjoin the Attorney General from keeping in effect his designation of the NATIONAL COUNCIL OF AMERICAN-SOVIET FRIENDSHIP, INC. (hereinafter called the NATIONAL COUNCIL) purportedly made pursuant to Executive Order 9835, the so-called Federal Loyalty Order, and to require him to strike the name of the NATIONAL COUNCIL from any and all designations purportedly made under said Executive Order; to enjoin the Loyalty Review Board from publicizing and using such designation; and to obtain a declaratory

judgment that such designation is unconstitutional and otherwise illegal and that Part III, Sec. 3, and Part V, Sec. 2f, of the Executive Order 9835 are unconstitutional.

III. Parties

A. PLAINTIFFS

3. The NATIONAL COUNCIL is a non-profit membership corporation, organized in February, 1943, and existing under the laws of New York. Its purpose is to strengthen friendly relations between the United States and the Union of Soviet Socialist Republics by disseminating to the American people educational material regarding the Soviet Union, by developing cultural relations between the peoples of the two nations, and by combatting anti-Soviet propaganda designed to disrupt friendly relations between the peoples of these nations and to divide the United Nations. The NATIONAL COUNCIL has as affiliates a number of local Councils in various cities of the United States, which assist it in carrying out its objectives and program. Also affiliated with it and endorsers of its purposes are a large number of persons eminent in professional, cultural and social fields known as Sponsors of the NATIONAL COUNCIL.

4. The DENVER COUNCIL OF AMERICAN-SOVIET FRIENDSHIP (hereinafter called the DENVER COUNCIL) is an unincorporated association located in the City of Denver, Colorado, affiliated with the NATIONAL COUNCIL.

3 5. The plaintiff, REV. HOWARD MELISH, is the Chairman of the NATIONAL COUNCIL and a member of its Board of Directors. Said plaintiff is and has been for many years the Assistant Rector of the Church of the Holy Trinity in the Borough of Brooklyn, City of New York.

6. The plaintiff, REV. RICHARD MORFORD, is Executive Director of the NATIONAL COUNCIL, a member of its Board of Directors and is employed by the NATIONAL COUNCIL on a full-time basis.

7. The plaintiff, HENRY PRATT FAIRCHILD, is Secretary and former Treasurer of the NATIONAL COUNCIL and a member of its Board of Directors. He is Professor Emeritus of Sociology of New York University and a consultant to a commission of the Economic and Social Council of the United Nations, and an expert on population movements and a public lecturer.

8. Plaintiff DR. JOHN A. KINGSBURY has been a Sponsor since the inception of the NATIONAL COUNCIL, became a member of the Board of Directors in January, 1948, and subsequently became Treasurer of the NATIONAL COUNCIL. He has held many positions of public importance, particularly in the field of charitable endeavor and public health. He has been Commissioner of Public Charities for the City of New York, Director of the American Red Cross in France (1918), Director of Extension Work, Army Educational Corps with rank of Brigadier General, Executive Director of Milbank Memorial Fund, and Administrative Consultant to the heads of the Work Progress Administration and National Youth Administration (1935-1939). For many years he has been an author and lecturer and has an outstanding reputation, national and international, in his professional field.

9. Plaintiff M. WALTER PESMAN has been the Chairman of the DENVER COUNCIL and is presently a member of its Executive Board. He is a landscape architect and land planner, whose services have been in demand as a consultant on public landscape and planning projects and has frequently taught courses in his professional field in a number of universities. He is widely-known as a speaker and lecturer.

10. Plaintiff CORLISS LAMONT, was formerly Chairman of the NATIONAL COUNCIL and is presently a member of the Board of Directors. He is a well-known author and lecturer.

4 11. Since its inception in February, 1943, the NATIONAL COUNCIL has carried on programs of

educational activities in the furtherance of its objectives, through the exercise of speech, press, assembly, association and petition, as more particularly set forth in paragraphs 14 to 19 hereof.

B. DEFENDANTS

12. Defendant TOM C. CLARK is the Attorney General of the United States and has his principal office in the District of Columbia.

13. Defendant SETH W. RICHARDSON is the Chairman of the Loyalty Review Board of the Civil Service Commission, and defendants GEORGE W. ALGER, JOHN HARLAN AMEN, HARRY A. BIGELOW, AARON J. BRUMBAUGH, JOHN KIRKLAND CLARK, CLEM W. COLLINS, HARRY W. COLMERY, BURTON L. FRENCH, META GLASS, EARL G. HARRISON, GARRETT HOAG, WILBUR LA ROE, JR., LAWRENCE T. LEE, ARTHUR W. MAC MAHON, CHARLES E. MERRIAM, HENRY PARKMAN, JR., MURRAY SEASON-GOOD, HARRY L. SHATTUCK, MRS. HARPER SIBLEY and JAMES F. TWOHY, are the other members of that Board. The Loyalty Review Board has its principal office in the District of Columbia.

IV. *Activities of Plaintiffs and Rights Affected*

14. The NATIONAL COUNCIL has caused to be prepared numerous exhibits dealing with various aspects of life in the Soviet Union. These exhibits consist of posters, water colors, photographs, other art material and models of various kinds all accompanied by suitable texts. The NATIONAL COUNCIL also exhibits Soviet newspaper and book collections. These exhibits were widely circulated throughout the United States in cooperation with leading museums, libraries, schools and colleges. On occasion exhibits of similar material depicting life and culture in the United States were prepared and transported to the Soviet Union for exhibition purposes.

15. The NATIONAL COUNCIL has prepared and caused to be published, sold and circulated numerous pam-

phlets dealing with various aspects of life in the Soviet Union and studies on international relations involving the Soviet Union and the United States. It has also published statements of leading Americans and Soviet citizens including those of high standing in governmental, diplomatic, military, industry and trade union fields, dealing with relations between the Soviet Union and the United States, and stressing as a central theme the need for the development of American-Soviet friendship as a prime requisite for world peace. It has issued many press releases on

5 these various subjects. The NATIONAL COUNCIL has sold and circulated many books and pamphlets, published in the United States by persons not connected with the NATIONAL COUNCIL. The NATIONAL COUNCIL has participated in the distribution of motion picture films and other photographic material dealing with life and culture in the Soviet Union. It has issued factual material and analyses answering anti-Soviet propaganda designed to disrupt American-Soviet relations and to divide the United Nations.

16. The NATIONAL COUNCIL has maintained a speakers bureau, providing speakers for many meetings held throughout the United States. The addresses of these speakers covered a wide variety of subjects such as: Soviet culture and science, the nationalities of the Soviet Union, mother and child care, the economic, educational and political structure of the Soviet Union and American-Soviet relations. Such speakers on occasion spoke directly under auspices of the NATIONAL COUNCIL, at other times under auspices of affiliates including the DENVER COUNCIL. Addresses were delivered before colleges, women's groups, nationality groups, churches and service clubs including the Kiwanis, Rotary and Chamber of Commerce.

17. The NATIONAL COUNCIL has conducted, initiated, sponsored and cooperated in numerous public meetings and discussions dealing with various aspects of Soviet life and American-Soviet cooperation, including public

mass meetings attended by thousands of persons, at which high ranking government, diplomatic and military officials of the United States, and the U. S. S. R., leading American business men, trade union officials, and others prominent in public life have delivered addresses on the subject of American-Soviet relations. On occasion such meetings were broadcast on national and local radio hook-ups. Messages to the meetings were received from important persons in public life, including Presidents of the United States. At such meetings, resolutions were adopted petitioning for governmental action in the field of American-Soviet relations based on the exigencies of the particular occasion.

18. The NATIONAL COUNCIL has initiated and sponsored a number of professional, scientific and cultural committees, participated in by outstanding American individuals in particular fields, including committees on music, art, dance, architecture, theatre, science and education, and a special committee of women. These committees have held numerous educational meetings, forums, conferences, con-

6. certs and art exhibitions, which were widely attended, at which various aspects of American and Soviet culture were discussed and considered and at which, on occasion, American governmental officials participated. On occasion these committees, aided directly by the executive staff of the NATIONAL COUNCIL sponsored the exchange of artists and experts and of cultural and scientific material between the United States and the Soviet Union, published such material in the United States, and caused messages to be exchanged between such groups and individuals in each country as tokens of understanding and friendship. Two of these committees, namely: the committees on science and music, have for some time existed independently of the NATIONAL COUNCIL.

19. The NATIONAL COUNCIL has from time to time published various publications, entitled "The Reporter", "Facts" and "Report on the News". These publications have provided facts concerning the life and activities of the

people of the Soviet Union. They have provided also analyses and comment upon current American Soviet relations. Their purposes have been to increase understanding of the Soviet Union and to achieve an American policy for peace based on American-Soviet cooperation thus safeguarding the interests and security of the people of the United States.

20. The NATIONAL COUNCIL still is engaging in, and intends to continue, the activities described in the preceding paragraphs hereof.

21. In connection with the activities hereinbefore set forth, the NATIONAL COUNCIL has expended large sums up to approximately \$100,000 per annum. The expenditures include the payment of a staff, maintenance of its office, the preparation and publication of its pamphlets and other literature, the preparation of its exhibits, conduct of its mass meetings, conferences, forums and other expenditures to facilitate the exercise of the constitutional rights described in paragraph 11 hereof. The money required to carry on the said activities was generally received by direct public appeal and contribution from American organizations and individuals who were in sympathy with the objectives of the NATIONAL COUNCIL and, in very substantial amount, through collection and solicitations at the meetings and other events hereinbefore described as well as through large public dinners at which addresses were made on the subject of American-Soviet relations and on the need for supporting the educational activities of the NATIONAL COUNCIL.

7 22. All the plaintiffs herein, and the members of the NATIONAL COUNCIL and of the DENVER COUNCIL have participated in activities of the NATIONAL COUNCIL, and in exercise of the rights described in paragraph 11 hereof, and in contributing and soliciting the funds expended by the NATIONAL COUNCIL in connection therewith and intend to continue such participation. The officers and members of the DENVER COUNCIL par-

ticipate particularly in activities of the kind heretofore described within Denver and its vicinity, and obtained support and financial assistance from the public in that area.

23. In all its activities the NATIONAL COUNCIL has sought to further the best interests of the American people by lawful, peaceful and constitutional means. It has never in any way engaged in any conduct or activity which provides any basis for it to be designated as "totalitarian, fascist, communist or subversive, or as having adopted a policy of advocating or approving the commission of acts of force or violence to deny others their rights under the Constitution of the United States, or as seeking to alter the form of government of the United States by unconstitutional means".

8 V. *Acts of Defendants Complained of*

24. On or about March 25, 1947, the President of the United States issued Executive Order No. 9835, which is still outstanding.

25. Said Executive Order provides generally, for "loyalty investigation" of civilian employees in the Executive Branch of the Federal Government and of applicants for civil employment in the Executive Branch of the Federal Government.

26. Part III, section 1 of said Executive Order No. 9835 provides for the establishment of a Civil Service Commission Loyalty Review Board and pursuant thereto such a Board was established and the chairman and members thereof appointed by the President of the United States on or about November 8, 1947, all being defendants herein.

27. Part III, section 3 of the Executive Order provides:
3. The Loyalty Review Board shall currently be furnished by the Department of Justice the name of each foreign or domestic organization, association, movement, group or combination of persons which the Attorney General, after appropriate investigation and determination, designates as totalitarian, fascist, communist or subversive,

or as having adopted a policy of advocating or approving the commission of acts of force or violence to deny others their rights under the Constitution of the United States, or as seeking to alter the form of government of the United States by unconstitutional means.

a. The Loyalty Review Board shall disseminate such information to all departments and agencies.

28. Part V, section 2 provides in part as follows:

2. Activities and associations of an applicant or employee which may be considered in connection with the determination of disloyalty may include one or more of the following:

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f. Membership in, affiliation with or sympathetic association with any foreign or domestic organization, association, movement, group or combination of persons, designated by the Attorney General as totalitarian, fascist, communist or subversive, or as having adopted a policy of advocating or approving the commission of acts of force or violence to deny other persons their rights under the Constitution of the United States, or as seeking to alter the form of government of the United States by unconstitutional means.

29. On or about November 24, 1947, and again on or about May 28, 1948, the defendant, TOM C. CLARK, furnished to the Loyalty Review Board a list of organizations purportedly designated by him under Part III, section 3 of Executive Order No. 9835. Included in the list was the plaintiff, the NATIONAL COUNCIL.

9 30. The NATIONAL COUNCIL never received any advance notice that it would be listed as aforesaid. The listing by the Attorney General did not in any way indicate in which of the various categories of Part III, section 3 of the Executive Order the NATIONAL COUNCIL was deemed to fall, thus failing to comply with the provisions of the Executive Order.

31. The defendant, TOM C. CLARK, listed the NATIONAL COUNCIL as aforesaid without making an "ap-

propriate investigation and determination", as required by Part III, section 3 of the Executive Order.

32. On December 6, 1947, and again on December 22, 1947, and on January 23, 1948, the NATIONAL COUNCIL requested of defendant, TOM C. CLARK, in writing that he furnish the particulars on which he had based his conclusions and that he afford the NATIONAL COUNCIL a public hearing at which it could refute his unfounded charges. On February 10, 1948, the Assistant to the Attorney General replied as follows:

Reverend William Howard Melish
National Chairman
National Council of American-Soviet Friendship, Inc.
114 East 32nd Street
New York 16, New York
Dear Reverend Melish:

This will acknowledge your various letters to the Attorney General with respect to the designation of your organization as within Executive Order No. 9835.

You will observe that the Executive Order contains neither provision nor authorization for any of the procedural steps to which you have referred.

Yours sincerely,

(signed) Peyton Ford

The Assistant to the Attorney General

33. On or about December 4, 1947, and again on or about May 28, 1948, the Loyalty Review Board unlawfully released for publication in the press of the nation the aforesaid listings of the Attorney General, which included the name of the NATIONAL COUNCIL. These listings received wide and repeated publicity in practically every newspaper in the country and in magazines and on the radio.

34. The aforesaid listings have been used by numerous commentators and editorial writers, addressing millions of people by press and radio, to injure the reputation of the NATIONAL COUNCIL, its officers, and members.

These persons have, using these listings as their basis, repeatedly declared through such media that the NATIONAL COUNCIL has been officially found to be "subversive" and "disloyal" and as advocating the overthrow of the government by force and violence".

35. The aforesaid actions of the defendants have been arbitrary, capricious, contrary to law, in excess of statutory right and authority. Such actions have violated the rights of the plaintiffs guaranteed by the First and Fifth Amendments to the Constitution and are contrary to the Ninth and Tenth Amendments.

36. Part III, section 3 and Part V, section 2 of the Executive Order 9835, on their face and as construed and applied, violate the First, Fifth, Ninth and Tenth Amendments to the Constitution, constitute an invalid delegation of power and provide for an unconstitutional imputation of guilt by association and under vague standards. The Executive Order permits and encourages the Attorney General to outlaw and stigmatize organizations, frustrate their work and punish their members, depending solely on his whim and caprice.

VI. *The Damage*

37. As a result of the aforesaid actions of the defendants, the plaintiffs have been subjected to vilification and vituperation, have been damaged in their personal and professional reputations, have had their right to speak and assemble and to carry on their activities obstructed and hampered, have had their right to work with and for the NATIONAL COUNCIL and its objectives, seriously impaired and have suffered great pecuniary loss.

38. The NATIONAL COUNCIL and the DENVER COUNCIL and its other local councils have, as a result of the aforesaid actions of the defendants, lost numerous members, officers and sponsors; lost public support; lost contributions; lost attendance at meetings; lost circulation of their publications; lost acceptance by colleges,

schools and organizations of their exhibits and other material; have been denied meeting places; have been denied radio time. The NATIONAL COUNCIL and the DENVER COUNCIL are unable to get members and support from federal employees, whose employment would be jeopardized by such membership or support. The work and activities of the NATIONAL COUNCIL have been seriously frustrated and unduly burdened thereby.

39. As a result of the aforesaid activities of the defendants, and a publicized demand by Senator Ball of Minnesota based on the aforesaid listings of defendant CLARK, the U. S. Treasury Department notified the NATIONAL COUNCIL and the public generally, 11 including past and prospective contributors to the NATIONAL COUNCIL, that the Treasury would no longer recognize that the NATIONAL COUNCIL, its affiliates, and contributors were entitled to tax exemption because of the educational purposes to which it was devoted. As a result, the NATIONAL COUNCIL and its affiliates have lost large sums of money which they would otherwise have received as contributions. The right of contributors to continue to claim and receive tax exemption has been unduly burdened.

40. As a result of the aforesaid activities of the defendants, the individual plaintiffs who, as leaders of the NATIONAL COUNCIL, are inevitably identified with the defendant CLARK's aforesaid listings, have in addition to incurring the damages heretofore recited, been damaged as follows:

(a) Plaintiff, REV. MELISH has been attacked by the vestry of his congregation who have sought support of the congregation in seeking his removal as Assistant Rector of the Church of the Holy Trinity, based on the listings of the NATIONAL COUNCIL by the Attorney General, and his congregation is involved in a violent, bitter and high publicized controversy concerning this effort to remove him.

(b) Plaintiff RICHARD MORFORD has been hampered in the performance of his duties as the chief executive officer of the NATIONAL COUNCIL and his right to perform his employment, from which he receives his livelihood, free from the stigma arising from the listings of the NATIONAL COUNCIL aforesaid.

(c) Plaintiff HENRY PRATT FAIRCHILD has had his prestige and standing as a lecturer impaired and has lost bookings and suffered cancellations. Many organizations fear to use his services because of the aforesaid listings. He has thus suffered considerable financial damage.

(d) The demand for plaintiff KINGSBURY as a lecturer on public health and welfare matters has been greatly impaired.

(e) Plaintiff M. WALTER PESMAN has been deprived of a number of commissions from public bodies as a landscape architect and land-planner, has had various contracts for his services cancelled, and has lost his teaching position at the University of Denver. Various of his speaking engagements have been cancelled. His livelihood has been seriously jeopardized and threatened.

(f) The acceptance by the public of plaintiff CORLISS LAMONT as a lecturer and authority in his specialized fields has been impaired.

12 41. As a result of the aforesaid activities of the defendants, all individual plaintiffs and all members and supporters of the NATIONAL COUNCIL and the DENVER COUNCIL have been deprived of their right to associate in the activities of the NATIONAL COUNCIL free from the taint imposed by the defendants by the listings aforesaid, and they have also had impaired their opportunities for public and private employment. A number of the individual plaintiffs herein have been employed by the United States government and by various state and governmental authorities. Because of their expert professional knowledge, said plaintiff had reasonable expectancy of similar employment in the future which expect-

tancy has been impaired if not destroyed by the actions of the defendants.

42. As a result of the aforesaid acts of the defendants, the plaintiffs have suffered, are suffering and will continue to suffer, serious and irreparable injuries for none of which do they have an adequate remedy at law.

VII. *Relief Sought*

Wherefore, plaintiffs demand:

(1) That the defendant TOM C. CLARK, individually and as Attorney General, be enjoined from keeping in effect the listing or designation of the NATIONAL COUNCIL purportedly made pursuant to Executive Order 9835.

(2) That the said defendant be enjoined from making under said Executive Order, any designation with respect to the NATIONAL COUNCIL, the DENVER COUNCIL or its other affiliates.

(3) That the said defendant be ordered to notify the Loyalty Review Board that membership in or affiliation with the NATIONAL COUNCIL by federal employees cannot be considered by the Board as relevant to matters within its jurisdiction.

(4) That all the defendants be enjoined from taking any action which may be based upon the inclusion of the NATIONAL COUNCIL'S name in any listings or designations under Executive Order 9835.

(5) That the defendants be ordered to release publicly a statement that the name of the NATIONAL COUNCIL has been withdrawn from the aforesaid listing of the Attorney General.

13 (6) That a declaratory judgment be entered declaring the aforesaid actions of the defendants illegal, and further declaring that Part III, section 3 and Part V, section 2 of Executive Order 9835 are unconstitutional.

(7) And such other and further relief as may appear just and proper.

14 Filed Aug 20 1948 Harry M. Hull, Clerk

Defendants' Motion to Dismiss the Complaint

Now come the defendants and move the Court to dismiss this action on the grounds that:

1. There is no present justiciable controversy between the parties hereto.

2. The complaint fails to state a claim against the defendants upon which relief can be granted.

In support of this motion, the Court is respectfully referred to defendants' Memorandum of Points and Authorities attached hereto.

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15 Filed Feb 1 1949 Harry M. Hull, Clerk

Opinion of the Court

The plaintiff, a non-profit corporation, together with a similar corporation associated with it, and certain individuals who are also connected with it, seek to enjoin the defendants, the Attorney General and the members of the Loyalty Review Board, both in their respective official capacities and as individuals, from keeping in effect the listing or designation of the plaintiff corporations as "subversive." The Attorney General, pursuant to an Executive Order of the President issued by him pursuant to the Civil Service Act of 1883 (22 Stat. 403) as amended, and section 94 of the Act of August 2, 1939 (18 U. S. C. 611), addressed a letter to the Chairman of the Loyalty Review Board of the Civil Service Commission, listing certain organizations and groups, including the plaintiff corporations, determined by him to fall within the description of Part III, par. 3 of the said Executive Order as totalitarian, fascist, communist, or subversive. This letter also stated that membership in, affiliation with or sympathetic association with, any organization designated, is simply one piece of evidence which may or may not be helpful.

The plaintiffs claim that they are injured by the designation of the plaintiff corporations as subversive; that they have lost members and officers; public support, contributions, etc.; that one of the plaintiff corporations has lost its tax exempt status; that the individual plaintiffs have been damaged in their personal reputations, have lost their right to assemble and speak, etc.

Of course so far as the tax status of the plaintiff corporations is concerned, the letter of the Attorney General has no effect; that status is determined by the law or the tax authorities.

None of the plaintiffs are employees of the United States and it is not apparent that any of them will seek that employment. The letter of the Attorney General is simply one of advice to various administrative agencies, and any indirect effect it might have upon the plaintiffs does not constitute legal damage. The finding of the Attorney General in any event is not conclusive and may be reviewed by any one who is legally entitled to be heard, whether an employee of the United States or one seeking that employment. The letter of the Attorney General can in no way subject the plaintiffs to any civil or criminal liability. See *Standard Scale Co. v. Farrell*, 249 U. S. 571; *U. S. v. Los Angeles S. L. R. Co.*, 273 U. S. 299.

I am satisfied that the Attorney General, acting for the President, cannot be restrained from giving such information as he may have to the various administrative agencies as to organizations which, in his opinion, are engaging in activities that operate against the maintenance of the Constitution and the welfare of the country.

So far as the liability of the defendants as individuals are concerned, there can be no question of their immunity. See *Spalding v. Vilas*, 161 U. S. 483, and the recent case of *Glass v. Ickes*, 73 App. D. C. 3.

The motion of the defendants to dismiss the bill will be sustained.

I may add that this same action has been taken in this court recently in two cases involving the same question of law. See *Joint Anti-Fascist Refugee Committee v. Clark*, and *Citizens Protective League, Inc. v. Clark*, (Civil Action No. 2329-48).

Jennings Bailey
United States District Judge

17 Filed Feb 8 1949 Harry M. Hull, Clerk

Order

The above cause, having come on for hearing on January 4, 1949, on the defendants' motion to dismiss the complaint; the Court having heard argument of counsel; the Court having considered the memoranda filed herein; and in accordance with the memorandum opinion filed by the Court on the 1st day of February 1949, it is hereby:

ORDERED, That the defendants' motion to dismiss be and hereby is granted; and it is further

ORDERED, That the complaint in the above-entitled cause be and hereby is dismissed with prejudice.

Jennings Bailey
United States District Judge

[fol. 20] [Stamp:] United States Court of Appeals for the
District of Columbia Circuit. Filed Oct. 25, 1949.
Joseph W. Stewart, Clerk

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF
COLUMBIA CIRCUIT, OCTOBER TERM, 1949

No. 10,165

NATIONAL COUNCIL OF AMERICAN-SOVIET FRIENDSHIP, INC.,
et al., Appellants,

v.

TOM C. CLARK, Individually and as Attorney General of
the United States, et al., Appellees

Before: Clark, Wilbur K. Miller and Proctor, Circuit
Judges

ORDER

This cause came on for consideration on the transcript of record from the District Court and on appellants' motion to decide the case without oral argument, and on appellees' motion to affirm the judgment of the District Court, and appellants' answer thereto.

On Consideration Whereof, It is Ordered by the Court that both of the above-described motions be granted, and that the order of the District Court on appeal herein be, and it is hereby, affirmed on the authority of No. 10,002, *Joint Anti-Fascist Refugee Committee v. Clark*, decided by this Court August 11, 1949.

Per curiam.

Dated October 25, 1949.

[fol. 21] [Stamp:] United States Court of Appeals for the
District of Columbia Circuit. Filed Oct. 27, 1949. Joseph
W. Stewart, Clerk

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF
COLUMBIA CIRCUIT, OCTOBER TERM, 1949

No. 10,165

NATIONAL COUNCIL OF AMERICAN-SOVIET FRIENDSHIP, INC.,
et al., Appellants,

vs.

TOM C. CLARK, Individually and as Attorney General of
the United States, et al., Appellees

ORDER

On consideration of the appellants' motion to substitute
J. Howard McGrath, Attorney General of the United
States, as a party appellee herein in the place and stead
of Tom C. Clark, who ceased to hold office as Attorney Gen-
eral of the United States on or about August 24, 1949, and
appellants having alleged that there is substantial need
for continuing and maintaining the action herein, and it
appearing that J. Howard McGrath, Attorney General of
the United States, consents to the motion for substitution,
It is

Ordered by the Court that J. Howard McGrath, Attorney
General of the United States, be, and he is hereby, substi-
tuted as a party appellee herein in the place and stead of
appellee Tom C. Clark.

Per curiam.

Dated October 27, 1949.

[fol. 22] [Stamp:] United States Court of Appeals for the District of Columbia Circuit. Filed Jan. 9, 1950. Joseph W. Stewart, Clerk

IN THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 10,165

NATIONAL COUNCIL OF AMERICAN-SOVIET FRIENDSHIP, INC.,
et al., Appellants,

v.

J. HOWARD McGRATH, Individually and as Attorney General of the United States, et al., Appellees

DESIGNATION OF RECORD

The clerk will please prepare a certified transcript of record for use on petition to the Supreme Court of the United States for writ of certiorari in the above-entitled cause, and include therein the following:

1. Joint appendix to briefs.
2. The order affirming the decision of the District Court.
3. The order substituting J. Howard McGrath as a party appellee in the place and stead of Tom C. Clark.
4. Designation.
5. Clerk's certificate.

David Rein, Attorney for Appellants.

Certification of Service

I hereby certify that I have served the within and foregoing Designation of Record in the above-entitled cause by mailing a copy thereof, post prepaid to the Solicitor General, Department of Justice, Washington, D. C., this 9th day of January, 1950.

David Rein.

[fol. 23] UNITED STATES COURT OF APPEALS FOR THE DISTRICT
OF COLUMBIA CIRCUIT

I, Joseph W. Stewart, Clerk of the United States Court of Appeals for the District of Columbia Circuit, hereby certify that the foregoing pages numbered 1 to 22, both inclusive, constitute a true copy of the joint appendix to the briefs of the parties, and the proceedings of the said Court of Appeals, as designated by counsel, in the case of: National Council of American-Soviet Friendship, Inc., et al., Appellants, v. J. Howard McGrath, Individually and as Attorney General of the United States, et al., Appellees, No. 10,165, January Term, 1950, as the same remain upon the files and records of said Court of Appeals.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court of Appeals, at the city of Washington, this eighteenth day of January, A. D. 1950.

Joseph W. Stewart, Clerk of the United States Court
of Appeals for the District of Columbia Circuit.
(Seal.)

[fol. 24] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed May 15, 1950

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit is granted. The case is transferred to the summary docket and assigned for argument immediately following Joint Anti-Fascist Refugee Committee vs. McGrath, No. 556.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Clark took no part in the consideration or decision of this application.

